Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, DC 20554



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| In the Matter of | ) | |
| | ) | |
| Truth-in-Billing | ) | CC Docket No. 98-170 |
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| and | ) | |
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| Billing Format | ) | |
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# COMMENTS OF TIME WARNER TELECOM, INC.

**TIME WARNER TELECOM, INC.**

Mitchell F. Brecher

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*Its Attorney*

November 13, 1998

## SUMMARY

Time Warner Telecom, Inc., a provider of competitive local exchange, exchange access, and interexchange services to medium and large business customers, opposes the Commission's proposal to promulgate rules governing the organization, format, and content of carrier billing. While TW Telecom shares the Commission's concern about the practices of "slamming" and "cramming," it believes that the appropriate way to prevent such conduct is to promulgate rules designed to prohibit and detect those practices, and to enforce those rules against violators, not by establishing detailed "one size fits all" billing requirements that would result in unnecessary and cumbersome micromanagement of the details of every carrier's billing processes.

The billing requirements proposed by the Commission would increase significantly TW Telecom's costs, and other carriers' costs of providing service. TW Telecom has forecast a billing cost increase of ten percent under a "low end" scenario, and billing cost increases of more than sixty percent under a "high end" scenario based upon estimates for implementation of the entirety of the Commission's billing proposals. Ultimately those costs of detailed billing regulatory requirements will be borne by consumers in the form of higher rates for telecommunications service, thereby denying consumers much of the benefit of the competitive environment contemplated by the 1996 Telecommunications Act.

The Commission does not have the jurisdictional authority to regulate the organization, format, and content of carrier bills. First, to the extent that the proposal contemplates regulation of the billing of intrastate services, including local exchange services, the courts have made it clear that the Communications Act denies the Commission authority to regulate the provision of intrastate communications, except in certain limited circumstances where intrastate and interstate components

of regulation cannot be separated, and where regulation of intrastate service is necessary to enable the Commission to regulate interstate service. Those circumstances do not exist with respect to carrier billing. Moreover, regulation of carrier billing would be inconsistent with Commission precedent that carrier billing is not common carrier service subject to Title II, and with precedent against exercise of Title I ancillary jurisdiction over billing.

The Commission should not impose specific requirements on bill organization because there is no single best way to format a telephone bill. Carrier billing practices often reflect the different services carriers offer and the different manners in which carriers package and price their services. Neither should the Commission establish specific requirements regarding the information which appears on bills. The existing statutory requirement that carrier rates, classifications, and practices must be just and reasonable entitles customers to invoices which are verifiable and which reasonably apprise them of the charges for which they are being billed. No more specific billing requirement is necessary.

Billing carriers should not be required to differentiate between "deniable" and "undeniable" charges. Discontinuance of service for non-payment is a matter left to state regulation, and the Commission should not reinsert itself into that matter. Moreover, mandatory identification of services as deniable or undeniable is likely to reduce the collection rates for undeniable services, even where the charges for those services were validly incurred. Lower collection rates and higher collection costs for carriers ultimately will lead to higher service prices for consumers. Finally, the Commission should not regulate whether and how carrier charges for universal service contributions and access charge surcharges or pass-throughs should appear on customer bills. If consumers believe that universal service and/or access charge-related surcharges are unreasonable, the lawfulness of

those charges may be challenged in a complaint. The Section 208 complaint process -- not a Truth-in-Billing rulemaking proceeding -- is the proper forum to consider the lawfulness of carriers' practices regarding recovery of regulatory-imposed costs, including universal service and access charges.

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**COMMENTS OF TIME WARNER TELECOM, INC.**

Time Warner Telecom, Inc. (TW Telecom), by its attorneys, hereby submits its comments in response to the notice of proposed rulemaking issued in this proceeding,[1] and states as follows:

INTRODUCTION

TW Telecom is a competitive provider of telecommunications services, including facilities-based local exchange service and exchange access service, and resold interexchange service, to medium and large business customers. TW Telecom's local exchange services are subject to regulation in those states where those services are offered. TW Telecom's exchange access and interexchange services are subject both to federal and state regulation. TW Telecom performs its own billing and collection for the telecommunications services which it offers. At this time, it provides only limited billing and collection services for other service providers.[2] TW Telecom's

[1]Truth-in-Billing and Billing Format (*Notice of Proposed Rulemaking*), FCC 98-252, released September 17, 1998 ("Notice" or "NPRM").

[2]Currently, the only circumstance in which TW Telecom provides billing services for other companies is when it bills for interexchange calls originated on a "dial around" basis (*e.g.*, by callers

billing has been designed to provide clear and timely information to its customers as to the nature of the services rendered, and the charges therefor.

As a new entrant in a marketplace long dominated by incumbent providers, TW Telecom recognizes that its ability to attract and retain customers will be dependent upon its ability to identify consumer wants and needs and to satisfy customer demands. For that reason, TW Telecom has expended considerable effort to learn what customers want as part of their telecommunications service. Identification of customer preferences in billing has been an important part of those efforts by TW Telecom. TW Telecom has learned from its customers that consumers desire clear, simple, accurate, and timely invoices. It has also learned that in the competitive market segments in which it operates, customer billing is among the factors which consumers evaluate (along with price, service quality and features) in selecting service providers and in determining whether to continue to do utilize those providers' services or taking their business to other carriers.

TW Telecom shares the Commission's concern that consumers need adequate information about the services they are receiving, and the available alternatives, in order to reap the benefits of a competitive marketplace.[3] TW Telecom also concurs with the Commission that unauthorized carrier selection changes ("slamming") and billing consumers for unordered and unwanted services ("cramming") are practices which have no place in a competitive telecommunications marketplace and should not be condoned. However, TW Telecom does not believe that imposition by the Commission of mandatory billing format or content requirements is permissible under applicable law nor wise as a matter of public policy. Moreover, TW Telecom believes that the most effective means

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dialing 1010XXX codes) from locations where TW Telecom is the local service provider.

[3]Notice, *supra* at ¶ 3.

for preventing slamming and cramming is for the Commission (as well as other federal and state governmental agencies) to promulgate rules specifically designed to prohibit and detect those practices, and to enforce those rules by imposition of appropriate sanctions to deter violations of those requirements, rather than by micromanaging the telecommunications provider billing process.[4]

TW Telecom's comments in this proceeding will focus on three areas: the cost of compliance with the Commission's proposals; the legal and jurisdictional considerations which underlie the Commission's billing proposals; and an analysis of certain of the specific proposals set forth in the Notice.

## I. IMPOSITION OF SPECIFIC CARRIER BILLING REQUIREMENTS WOULD SIGNIFICANTLY INCREASE CARRIERS' BILLING COSTS, AND WOULD INCREASE THE PRICE OF TELECOMMUNICATIONS SERVICES TO CONSUMERS

For TW Telecom and for all telecommunications providers, customer billing is a costly undertaking. Carriers must develop or purchase sophisticated billing systems which capture information about services and transactions and identify that information on invoices. Bills must be formatted, prepared, printed, and mailed to consumers. These activities require personnel, hardware and software systems, printing, and postage. TW Telecom's billing system -- a system which has generated virtually no consumer complaints -- cost many thousands of dollars. According to TW Telecom billing personnel, any change to the current billing system will require two types of costs to be incurred: one time development or preparation costs; and the recurring production costs.

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[4]Industry initiatives to combat cramming also have helped reduce the incidence of cramming. Such industry self-regulation efforts should be encouraged by the Commission. See. *e.g.*, Public Notice - "FCC and Industry Announce Best Practices Guidelines to Protect Consumers From Cramming," released July 22, 1998.

Following issuance of the Notice, TW Telecom billing personnel studied the proposals set forth in the Notice and calculated the likely impact of those proposals on TW Telecom's billing costs. Those costs include management and maintenance fees associated with the billing process, production costs, environmental enhancements, and printing and distribution costs. TW Telecom estimated the increases to its billing costs using two sets of assumptions: a "low end" scenario in which the currently-used billing format remained in use but with expansion of certain fields to permit enhanced description of services, and a "high end" scenario in which all of the changes proposed by the Notice were factored in. Under the low end scenario, TW Telecom estimates that its billing costs would increase by approximately ten percent. Under the high end scenario, its billing costs could increase by over an estimated sixty percent!

Billing costs and the impact of mandatory changes to billing systems on those costs are not unique to TW Telecom. All carriers would be subject to such cost impacts whether they perform their own billing or outsource their billing to billing service vendors. As a new entrant in the emerging competitive local services market, TW Telecom, like other facilities-based new entrants, is subject to very substantial capital costs to construct its network and to implement services that truly are alternatives to those of the incumbent carriers. In addition to the enormous network construction costs faced by TW Telecom and all other facilities-based new entrants, those companies incur substantial investments in management and other "back office" systems, including billing systems. Regulatory obligations which unnecessarily increase the magnitude of those investment requirements should be avoided. Adoption of carrier billing requirements which will increase new entrants' costs of market entry will reduce the amount of capital available to those companies to fund network construction and expansion. Further, irrespective of how these additional costs are incurred,

ultimately those costs will be borne by consumers of telecommunications services in the form of higher prices for those services. Imposition of price increases on consumers because of regulatory action is facially inconsistent with the objectives of the Telecommunications Act of 1996.[5] As the Commission acknowledged in the Notice, one of the goals of the 1996 Act is to make available to consumers new services and technologies by promoting the development of competition in all aspects of telecommunications service.[6] In establishing a national telecommunications policy in favor of competition, rather than regulated monopoly, as a model, Congress's purpose was not to promote competition for competition's sake. Rather, it was to increase choice and lower prices to consumers. Whether or not that objective has been achieved to date is a matter of debate. What is not debatable is that the Commission should avoid actions which raise the costs of providing service and result in higher prices to consumers for services which are supposed to be competitive. Regulations which will increase the cost of competitive entry and which raise the prices to consumers of increasingly competitive services should be avoided unless such regulations are absolutely necessary to prevent abusive practices.

## II. THE COMMISSION'S BILLING PROPOSALS ARE FRAUGHT WITH LEGAL PROBLEMS

a. The Commission has no Jurisdiction to Regulate Intrastate Services

In the Notice, the Commission has proposed to establish telephone billing regulations which would be applicable to local service, interexchange service, and commercial mobile radio service.[7]

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[5]Pub. L. No. 104-104, 110 Stat. 56 (1996).

[6]Notice, *supra* at ¶ 1.

[7]*Id.* at ¶ 6.

There is no question that the Communications Act affords the Commission no authority to promulgate regulations governing any aspect of intrastate telecommunications service, including local exchange service. Section 2(b) of the Act provides that "nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communications service."[8] As the Supreme Court noted in Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986), Section 2(b) fences off intrastate matters from Commission regulation. Among the intrastate telecommunications matters outside the Commission's authority to regulate is the billing of intrastate and local exchange services.

There is a very limited exception to the Section 2(b) restriction. That exception sometimes is referred to as the "impossibility" exception. As explained by the Supreme Court In Louisiana, and more recently articulated by the U.S. Court of Appeals for the Eighth Circuit in Iowa Utilities Board v. FCC,[9] the Commission may impose regulation on intrastate telecommunications service only when (1) it is impossible to separate the interstate and intrastate components of the regulation, and (2) state regulation would negate the Commission's lawful authority over interstate regulation.[10] Promulgation by the Commission of regulations governing the billing of intrastate service, including local exchange service, meets neither prong of this test. There is no reason why billing for intrastate service and for interstate service cannot be subject to separate requirements. Indeed, they often are.

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[8] 47 U.S.C. § 152(b). Section 221(b) denies the Commission authority over telephone exchange service, even where that service crosses state lines.

[9] Iowa Utilities Board v. FCC, 120 F.3d 753 (Eighth Cir. 1997), *pets. for cert. granted.*

[10] Louisiana, *supra*, 476 U.S. at 375-376, Iowa Utilities Board, *supra*, 120 F.3d at 796.

For example, many states have rules governing such billing matters as billing information, customer deposits, late charges, call detail and disconnection for non-payment. The fact that these requirements are applicable to intrastate services does not preclude interstate services from being billed on the same invoices even where they are not subject to those state-imposed requirements. Neither would states' regulation of intrastate service billing negate the Commission's ability to exercise its lawful authority to regulate interstate service. Thus, the so-called "impossibility" test is not satisfied, and there is no statutory basis for the Commission to promulgate regulations to govern the billing of any intrastate or local exchange service.

b. The Commission Has Disclaimed Authority to Subject Carrier Billing to Common Carrier Regulation and there is no Basis Either to Reimpose Title II Regulation of Carrier Billing or to Exercise Title I Ancillary Jurisdiction Of Carrier Billing

Regulation of the billing of interstate service would be inconsistent with Commission precedent that billing for telecommunications service, unlike telecommunications service itself, is not common carrier service and is not subject to regulation under Title II of the Communications Act.[11] In 1986, the Commission determined that carrier billing for other carriers is not common carrier service subject to regulation under Title II of the Act.[12] Although acknowledging that billing by a carrier of the charges for its own services may be an incidental part of its provision of communications service, carrier billing does not fall within the Commission's Title II regulation of common carrier services. As the Commission stated in that Detariffing Order, "billing and collection service does not employ wire or radio facilities and does not allow customers of the service, . . . , to

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[11]47 U.S.C. § 201 *et seq.*

[12]Detariffing of Local Exchange Carrier Billing and Collection Service, 102 FCC2d 1150 (1986), *recon.* 1 FCC Rcd 445 (1986).

communicate or transmit intelligence of their own design and choosing."[13] That statement is equally true for billing by a carrier of its own services as well as for carrier billing of other providers' services.

In finding that billing and collection of communications service is incidental to that communications service, the Commission concluded only that such billing and collection could be subject to regulation by the Commission under its Title I "ancillary jurisdiction."[14] However, the Commission declined to exercise that ancillary jurisdiction, noting that exercise of ancillary jurisdiction over billing and collection is appropriate only when a record finding can be made that such regulation of billing would be directed at protecting or promoting a statutory purpose.[15] In explaining its decision not to regulate billing, the Commission stated as follows:

> . . . because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service . . . .[16]

The degree of competition for LEC billing service in 1986 was minuscule compared with the competition in the provision of telecommunications services today. If there was sufficient LEC billing competition in 1986 to warrant a Commission determination not to regulate such service, either under Title II as common carrier service, or under Title I as incidental to communications, then the far higher levels of service competition today compels the same conclusion not to impose regulatory requirements on carrier billing -- either for one's own services or for other carriers' services. Indeed,

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[13]Detariffing Order, *supra* at ¶ 32.

[14]*Id.* at ¶¶ 36-37.

[15]*Id.*

[16]*Id.*

in the nearly thirteen year period since the Commission's Detariffing Order, the Commission never has deemed it appropriate to exercise its ancillary jurisdiction to impose regulation of what it characterized as a financial or administrative service, and it should not depart from that precedent now.

## III. THE SPECIFIC REQUIREMENTS PROPOSED IN THE NOTICE ARE UNNECESSARY, WOULD NOT ACHIEVE THEIR INTENDED OBJECTIVES, AND SHOULD NOT BE ADOPTED

### a. There is No One Correct Way to Organize a Telephone Bill and The Commission Should Not Attempt to Fashion a Mandatory Billing Format for All Carriers

The first portion of the Commission's billing proposal is to establish a uniform set of requirements to govern the organization of all carriers' invoices.[17] Included in this aspect of the Commission's proposal are suggested requirements as to billing separation by service category and by provider, mandatory summary pages, and formatting requirements dictating how new services, service changes, and service provider changes appear on customer invoices. TW Telecom urges the Commission not to adopt such a "one size fits all" set of billing requirements for the entire telecommunications industry. There is no single best way to format a telecommunications service bill. Different consumers want and need different information presented in different ways. Different providers target their services to different market segments and different types of customer bases. What may be beneficial billing information for some customers may be wholly unnecessary, or even wasteful and confusing, for other customers.

Historically, service providers have included billing features in designing their services and products for the market segments they wished to attract. For example, in the early days of

[17]Notice, *supra* at ¶ ¶ 16-19.

interexchange service competition, certain providers perceived a market opportunity to focus on the business segment of the marketplace by providing billing information and detail in ways that other carriers did not. Such features as account-specific or client-specific billing became a means by which carriers distinguished their services from each other. Some customers want extensive billing detail and are willing to pay premium prices for such detail; others do not. So long as the information contained in carrier invoices is correct, there is no need for the Commission to require that the information be presented in any specific order, organization or format.

Moreover, imposition of bill organization requirements on all providers disregards the fact that not all providers offer their services or price their services in the same manner. For example, a call detail requirement would be unnecessary and inappropriate for a carrier offering unlimited rate plans (*e.g.*, unlimited weekend calling for $25.00, or unlimited local service). Neither would it be wise to require separate billing by categories. In a market comprised of local exchange calling, extended area calling, short-haul toll, long-haul toll, intraLATA. interLATA, intrastate, interstate services, and where these distinctions are becoming blurred as carriers offer combinations of some or all of these, mandatory separation of these numerous -- and changing -- categories would be unwieldy, would require continuous updating, and would probably add to consumer confusion and misunderstanding of their services and their service providers. As the Commission correctly acknowledges in the Notice, service category distinctions are becoming blurred as providers offer multiple services.[18] Not only are carriers increasingly offering combinations of service which cross traditional categories (*e.g.*, interLATA and intraLATA, local and long distance), but carriers are now introducing pricing plans which obliterate distinctions in the pricing of services. AT&T's recently-

[18] *Id.* at ¶ 17.

announced Digital One Rate Plan which imposes a single per minute rate on all calls -- local, long distance, in-area, out-of-area, roaming, is an example of a plan which makes previous service distinctions meaningless and separation of the billing of such combinations of service unnecessary.

While the problems of slamming and cramming have been well-documented, TW Telecom fails to see how those problems would be resolved by imposition of billing organization requirements on all carriers. Today, virtually all telephone companies include the identity of carriers on their bills. If consumers are being billed for services by carriers other than those they have chosen, that will be readily apparent from the bill. There is no need to require that presubscribed providers be identified in any specific way, nor would there be any benefit from requiring that changes to consumer services be highlighted on invoices in any specific manner.

b. Full and Non-misleading Descriptions of Charges Should be Encouraged but not Made the Subject of a Commission Billing Regulation

In the Notice, the Commission states that carriers should provide consumers with full and non-misleading descriptions of charges on telephone bills, as well as clear identification of the service providers associated with those charges.[19] TW Telecom supports the notion that billing descriptions should be full and non-misleading and that provider identifications should be accurate and clear. It is doubtful whether any commenting party will quarrel with those objectives. The problem from a regulatory perspective is, what specific requirements, if any, should the Commission promulgate to ensure that those objectives are met. There is no single standard of clarity or level of detail appropriate for all carriers, all services, or all billed consumers. The level of billing detail desired by some consumers may be different from that needed by others. In a competitive marketplace, it is the

[19] *Id.* at ¶ 20.

responsibility of the service providers, including the billing entities, to ascertain consumer demand and to respond to it. Nowhere is this more apparent than in the commercial credit card industry -- an industry which, like telecommunications, includes credit and billing as critical components, and which, like telecommunications, has become highly competitive. In addition to competing with each other based on such factors as interest rates and incentive premiums (*e.g.* frequent flyer miles or grocery credits), banks and other financial service companies in the credit card business have modified and enhanced their billing formats and details -- not in response to government regulation, but in response to consumer demand. That has begun to occur and will continue to occur in the telecommunications industry.[20]

Under widely-recognized standards of commercial reasonableness, as well as the "just and reasonable" standard codified in the Communications Act,[21] consumers are entitled to invoices which are verifiable and which reasonably apprise them of the charges for which they are being billed. Thus, there is no need for the Commission to further regulate how telephone bills should be organized -- an area which the Commission determined years ago not to constitute common carrier service and not to warrant even ancillary regulation.[22]

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[20]Recent press reports have described the commitment of telecommunications carriers to improving their customer billing systems in response to expressions of dissatisfaction about their current systems. See, *e.g.*, "Telecom Talk; Carriers Tackle Cramming," Los Angeles Times, October 12, 1998, section C, page 3 ("GTE and other phone companies have begun voluntarily enacting policies to combat rogue operators who bill consumers for unauthorized services . . . ." "Pacific Bell, BellSouth and Bell Atlantic also won't bill for noncommunications-related services." "Ameritech is changing its bills to include a summary page at the front that lists service providers' names and contact information.")

[21]47 U.S.C. § 201(b).

[22]Detariffing Order, *supra*.

c. Billing Carriers Should Not be Required to Differentiate Between "Deniable" and "Undeniable" Charges Appearing on Telephone Invoices

TW Telecom urges the Commission not to impose a requirement that billing carriers indicate which charges are deniable (*i.e.*, non-payment may result in termination of local service) and which are not deniable (*i.e.*, services which cannot be terminated by a telephone company because of customers' failure to pay). There are several objectionable aspects to this proposal. First, under existing Commission policy, whether to allow discontinuance of local service for non-payment of long distance charges is a matter left to state regulation.[23] Having determined many years ago that the "deniability" of interstate toll service is a matter left to state regulation, the Commission should not now reimpose federal regulatory considerations into that state matter by requiring when and in what manner service deniability should be reflected in telephone invoices.

Although pay-per-call services are subject to a requirement that such services be indicated as non-deniable on consumer bills, that is a unique situation and the analogy is not appropriate to the instant situation. The Commission notes correctly that there are requirements as to how the non-deniability of pay-per-call services must be indicated on telephone bills when charges for such services are billed by telephone companies. However, it is important to recognize that those requirements are imposed not in the first instance by Commission regulatory initiative, but by the Telephone Disclosure and Dispute Resolution Act,[24] and regulations promulgated by the Commission (and by the Federal Trade Commission) to implement that statute. There is no analogous statute which warrants a Commission rule governing notification on invoices of non-deniability of any other

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[23] *Id.* at ¶ 51.

[24] 15 U.S.C. § 5701 *et seq.* and 47 U.S.C. § 228 (1992).

services.

There is another reason why the Commission should not require identification of deniable and non-deniable charges on telephone bills. As indicated above, with the exception of pay-per-call services, questions regarding non-deniability are state matters. Services which are classified as non-deniable, and therefore, not subject to local service disconnection for non-payment are legitimate services the charges for which are properly due and owing when consumers elect to purchase those services. TW Telecom is concerned that over time attaching the label "non-deniable" to services on telephone invoices may indicate to consumers that those charges may be ignored without risk of disruption to their telephone service. Whether or not failure to pay for certain services may result in disconnection of consumers' telephone service does not affect whether consumers incur legal obligations to pay the charges incurred for such services. Separately identifying deniable and non-deniable charges on bills may significantly reduce the collection rate for those services listed as non-deniable, thereby increasing the collection costs for those services, and ultimately the prices for those services.

d. The Commission Should Not Regulate Whether and How Charges Related to Federal Regulatory Action Should Appear on Customer Bills Rendered by Telecommunications Carriers

TW Telecom urges the Commission not to attempt to impose requirements as to how carriers reflect imposition of charges associated with universal service contributions and/or access charges in invoices rendered to consumers. TW Telecom understands that certain carrier decisions to pass through to consumers separate line item charges to offset carriers' universal service assessments or flat-rate access charge elements like, for example, the Presubscribed Interexchange Carrier Charge (PICC) have generated considerable controversy, and have resulted in consumer complaints, including

complaints to the Commission. However, by seeking to prescribe how carriers describe such line items on invoices, the Commission avoids the far more significant issue of whether, and under what circumstances, carriers may assess universal service and access charge fees on their customers.

TW Telecom does not presently impose PICC surcharges on its long distance customers. Like other telecommunications carriers, TW Telecom is subject to universal service contribution requirements based on revenues derived from services provided to end users. Also like other telecommunications carriers, TW Telecom is entitled to recover those costs from its customers. Indeed, TW Telecom includes a line item on its invoices designated as "Federal Universal Service Fee." The manner in which TW Telecom has chosen to describe its universal service line item is accurate, is not misleading, and conforms fully with Commission policy regarding the manner in which universal service contribution amounts are passed through to end users and the manner in which those charges are identified.[25] In addition, TW Telecom provided written explanations of the universal service line charge to all customers when it began to assess the charge. TW Telecom has received no indications from customers that its customers either do not understand what the charge is for or that they object to the universal service charge.

The decision whether to include universal service contribution amounts in its service charges, or to recover those amounts as line item surcharges reflected separately from usage charges, is a business decision appropriately left to each carrier based on each carrier's perception of the marketplace in which it operates, consumer expectations, and such other factors as each carrier deems appropriate for recovery of its universal service obligations.

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[25]See Federal-State Joint Board on Universal Service (*Report and Order*), 12 FCC Rcd 8776 (1997) at ¶ 855.

By proposing to establish requirements governing how carriers must identify universal service-related and access charge-related charges on consumer bills, the Commission seems to be confusing two very separate matters: 1) whether certain charges are lawful, and 2) how charges should be indicated in invoices. While the Notice is nominally focused on the latter, in reality, the Commission's concern seems to be directed to the former. This disparity between pricing and billing is reflected throughout the Notice as well as in several of the individual Commissioners' statements issued with the Notice. For example, Commissioner Tristani notes that certain carriers are charging consumers a "pass through" of the PICC charge based on a "blended" rate higher than the $0.53 rate currently applicable to primary residential lines.[26] Whether or not imposition of a PICC surcharge on residential consumers greater than $0.53 can be deemed to be just and reasonable as required by Section 201(b) of the Act is a very different question than whether carriers should be required to describe the PICC charge pass through in any specific manner. Consumers who believe that such charges are not just and reasonable may challenge those rates by filing complaints pursuant to Section 208 of the Act. The Section 208 complaint process is the appropriate forum for determination of the just and reasonableness of carrier charges, including universal service-related and access-related charges. The Commission should avoid using a Truth-in-Billing rulemaking proceeding to attempt to regulate rates of carriers which have generated complaints and which it may deem to be objectionable.

Issues relating to the manner in which carriers may impose universal service-related charges

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[26]Separate Statement of Commissioner Gloria Tristani at 2.

on consumers already are under study by the Federal-State Joint Board on universal service.[27] That proceeding, not the instant Truth-in-Billing proceeding, is the proper forum for the Commission to address the reasonableness of carrier assessment of universal service charges on consumers. So long as carriers are doing what they have a legal right to do -- recover their universal service costs from customers as surcharges, there is no reason for the Commission to attempt to direct carriers how to list those charges on invoices.

## CONCLUSION

As described throughout these comments, TW Telecom urges the Commission to resist the temptation to impose detailed and stringent requirements governing the billing of telecommunications services -- a function which the Commission consistently has determined not to be common carrier service itself. Rather than attempting to micromanage the content, format, and organization of carrier bills, TW Telecom instead urges the Commission to focus its efforts on developing and enforcing appropriate rules to prevent slamming and cramming, encouraging continued industry self-regulation, and on regulating the charges for telecommunications services, including charges associated with

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[27] Notice, *supra* at ¶ 26, n. 55. The Commission recently has referred to the Federal-State Joint Board on Universal Service the issue of the extent and manner in which it is "reasonable for providers to recover universal service contributions through rates, surcharges, or other means. See Federal-State Joint Board on Universal Service (*Order and Order on Reconsideration*), FCC 98-160, released July 17, 1998.

universal service and access, consistent with its rules and policies governing the regulation of dominant and non-dominant carriers.[28]

Respectfully submitted,

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[28]The fact that the Commission retains the authority to regulate the charges and practices of non-dominant carriers and that it is prepared to determine such practices to be unlawful was recently confirmed by the Commission in Halprin, Temple, Goodman, & Sugrue v. MCI Telecommunications Corporation, *et al* (File No. E-98-40), FCC 98-297, released November 10, 1998. In that case, the Commission concluded that a non-dominant carrier's tariff description of its non-subscriber rates was not clear and explicit as required by Section 61.2 of the Commission's Rules, and that the non-dominant carrier's practice of charging non-subscriber rates for direct-dialed calls is unreasonable in violation of Section 201(b) of the Act. Lest there have been any doubt as to the Commission's authority and willingness in appropriate circumstances to regulate the practices of carriers, including non-dominant carriers, without resort to imposition of special billing rules, that doubt was resolved by the decision in Halprin, Temple, Goodman & Sugrue.

## CERTIFICATE OF SERVICE

I, Antoinette M. Thorne, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing Time Warner Telecom Inc.'s "*Comments*" in CC Docket No. 98-170, was served this 13th day of November, 1998, *via hand delivery* on the following:

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